



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of October 28, 2008
Approved November 25, 2008

Members present: Chairman Doug Andrew, Co-chairman Scott Boisvert, Members Jack Baker, John (Jack) Downing, and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew called the meeting to order at 7:44 p.m. then called the roll.

MINUTES

Mr. Downing made the motion to accept the minutes of the September 30, 2008 meeting as written. Motion seconded by Mr. Baker with unanimous favorable.

Mr. Andrew appointed Mrs. Bolduc as an alternate to the Board for this evening, taking the place of absent Member Aaron Epstein.

Case # 08-004
Frank C. Bettencourt, Jr.
Under Power of Attorney for Susan Boyd,
Executrix of the Estate of Frank C.
Bettencourt, Sr.
Exeter River Camping Area
MAP 2 LOT 029

Present: Applicant Frank C. Bettencourt Jr. Under Power of Attorney for Susan Boyd, Executrix of the Estate of Frank C. Bettencourt, Sr., Realtor Pat Mulcahey, Conservation Commission Members Pat deBeer and Janice O'Brien, Mark Traeger of the Exeter River Local Advisory Committee (ERLAC).

Mr. Andrew opened this Public Hearing at 7:45 p.m. and stated that this is a continuation of the September 30, 2008 portion of this Public Hearing which was continued to allow time for comment sheets to be sent to Town Boards and Commissions and received back from them.

Mr. Andrew gave the following brief overview of this case so far.

1. The applicant first applied on August 11, 2008 for a Use Variance from the terms of Article III Section 1-D.2 to be allowed to re-establish the lapsed non-conforming use of the property as the Exeter River Camping Area.
2. The Board received legal advice that this application cannot be considered by the ZBA under Article III Section 1-D-2 because it is beyond the jurisdiction of the Board since the time period to permit the property to continue the non-conforming use had expired prior to the submission of the application.
3. The property is located in the Flexible Use Residential Zoning District and the Wetland and Watershed Protection District. At the September 30, 2008 portion of this Public Hearing the applicant agreed to change the application to reflect that he is now seeking:

A) a Use Variance requesting relief under Article XVIII Section 4.1.1 to re-establish the lapsed non-conforming use of the property as the Exeter River Camping Area in the Flexible Use District without the required Conditional Use Permit.

And;

B) a Use Variance under Article IX Section E to re-establish the lapsed non-conforming use of the property as the Exeter River Camping Area to be considered a permitted use in the Wetland and Watershed Protection District.

Mr. Andrew read Article IX Section E (Wetland and Watershed Protection District) and Article XVIII Section 4.1.1 (Zoning District).

The following additional comment sheets and comments were received and read aloud in their entirety.

1. *The Conservation Commission* addressed the five conditions of a Variance and cited rational why, in their opinion the following would be true: (see entire submittal in the file)

1. There **would be a diminution in value of surrounding properties** as a result of granting this variance
2. The granting of this variance **would be contrary to public**
3. Denial of the Variance would **not** result in unnecessary hardship to the owner because
 - a) there is a fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property
and
 - b) that the variance **would** injure the public or private rights of others.
4. By granting this variance substantial **injustice** would be done.
5. The use contemplated by petitioner as a result of obtaining this variance **would be contrary to the spirit of the ordinance.**

The Conservation Commission also advised that The Shoreland Protection Act (RSA 483-B) requires a 50' waterfront buffer in which "no natural ground cover shall be removed, except for a footpath to the water that doesn't exceed 6' in width and does not concentrate stormwater, or contribute to erosion." Any waterfront campsites would automatically lend themselves to an increase in access that would exceed the 6' width and contribute to degradation of vegetation, eventually leading to increased runoff and erosion of the shoreline. In addition, RSA 483-B requires a natural woodland buffer of 150' in which at least 50% of the area shall be maintained in an unaltered state, and not more than 20% of the area shall be protected from being impervious.

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It is the opinion of the Conservation Commission that trailers, tents, platforms, awnings, tarps and other camping equipment renders the land underneath impervious, as it prevents infiltration of water and creates accelerated stormwater runoff into the protected wetland, which will ultimately lead to additional degradation of the water quality and surrounding habitat of the Exeter River.

2. *The Exeter River Local Advisory Committee (ERLAC)* urged denial of the Variance citing negative impact of water quality and wildlife habitat and increased potential flooding.

3. *The Fremont Health Officer* Gertrude Butler commented that she has a concern with a campground in the wetland and watershed area.

4. *The Fire Chief* Richard Butler commented that if it is reopened as a campground he would have to review the layout for access.

5. *The Building Inspector/Code Enforcement Officer* Thom Roy commented that while this matter has been advised to now follow their request through a different provision of the Zoning Ordinance, the basic request remains the same – which is to re-establish a use that pre-existed the zoning. He added he understands that the complexity of the loss of that use can be attributed to the national downturn in real estate market and the time required for the family to work through the estate issues. He stated that he feels the site should be put under the jurisdiction of the Planning Board and site plan review for any subsequent renewal of operations.

The Board also received from Mrs. deBeer: (read in their entirety)

1. A July 11, 2008 Seacoast News article entitled “Experts: Great Bay is in Great Danger” by correspondent Karen Dandurant.
2. A June 6, 2008 Exeter Newsletter article relative to the effect of Great Bay Estuary due to ecosystem changes. (see file)
3. The “Highest Quality Wildlife Habitat In NH” map created in 2006 by the NH Wildlife Action Plan showing that the location of the subject property is in the highest quality habitat area.
4. Data summary of the buffer stream characterization that goes with the buffer that stores the data for NH projects.
(see file for all data submitted)

At this time Mr. Andrew asked if there were any comments from abutters or members of the public.

Mrs. deBeer stated that the area where the campground is located has already exceeded 10% of impervious surface, not necessarily by the campground. She explained that exceeding 10% means the water quality will deteriorate. Mrs. deBeer stated that Fremont has a water resource plan that was created in 1992 in conjunction with Rockingham Planning Commission and all the Fremont water ordinances resulted from that plan. She urged the ZBA to uphold the zoning and to not wipe out the hard work that people have done to protect the wetlands. Arsenic pollution was mentioned and it was thought that the campground would not be a contributing factor. There was a conversation relative to impervious surface.

Mr. Traeger stated that ERLAC is comprised of 9 towns along the 4th order streams, one of which is the Exeter River. He said that the reason for the Comprehensive Shoreland Act, which is regulated by the State, is to keep as much buffer for the streams and rivers as possible and to slow flooding damage. Mr. Traeger said that ERLAC would like to see the property limited to households versus a number of campers.

Mrs. O'Brien said that we have a duty to protect the residents of Fremont. She stated that the usage that is being proposed would be in the interest of a small group of people who do not reside in the area and have no vested interest in impact on the residents of Fremont. Mr. Bettencourt objected to Mrs. O'Brien's statement and said that when his family purchased the campground there were some issues and the family chose not to open the campground until all the issues are taken care of. This was his family's home and they lived here a long time.

Mr. Mulcahey suggested that it could be possible to do site plan review that would address some of the controversial issues. There was a conversation relative to the number of sites approved by the DES and Mrs. Bolduc noted that none of the sites were approved for septage. Mr. Bettencourt agreed.

Mr. Andrew asked Mr. Bettencourt if the written answers he submitted with the application under Article III Section 1-D.2 to address the five conditions of a Variance are still the correct answers given that the Use Variance is now requested from Article IX Section E and Article XVIII Section 4.1.1. Mr. Bettencourt said that his answers would remain as earlier submitted.

Mr. Bettencourt's written answers addressing the five conditions of a Use Variance to Article IX Section E and Article XVIII Section 4.1.1. to re-establish the lapsed non-conforming use of the Exeter River Camping Area are as follows.

1. The proposed use would not diminish surrounding property values because:

Mr. Bettencourt answered that the property has been operating as a campground for almost thirty years in this location. It is used for recreational camping and is located in a secluded and quiet area with a heavy tree line on one side and the Exeter River on the other.

2. Granting the variance would not be contrary to the public interest because:

Mr. Bettencourt answered that it has been operating for close to thirty years without incident or contrary to public interest concerns.

3. Denial of the variance would result in unnecessary hardship to the owner because:

Mr. Bettencourt answered that due to the unique setting of the property surrounded by a protected watershed, use of the property is heavily regulated and limited.

a. The zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:

Mr. Bettencourt answered that Recreational campers are not permanent structures and are removed prior to any spring floods.

b. That no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property because:

Mr. Bettencourt answered that the property is over 6+ acres surrounded by woods and the Exeter River. It is secluded and quiet and environmentally friendly to the area.

c. The variance would not injure the public or private rights of others since:

Mr. Bettencourt answered that During its historical operation the campground never interfered with the private or public rights of others.

4. Granting the variance would do substantial justice because:

Mr. Bettencourt answered that a recreational campground would surely be the wisest use of the property in maintaining the area in its' natural state.

5. The use is not contrary to the spirit of the ordinance;

Mr. Bettencourt answered that it would in no way diminish the property values of others, it is not contrary to public interest, it would not injure the public or private rights of others.

The Board again reviewed a copy of the plan submitted which showed the entire 6.19 acre parcel with the locations of all abutting properties. The Board considered Mr. Bettencourt's answers to each of the five conditions, the Conservation Commissions submission and all other information submitted and received. There was further discussion by the Board relative to public interest, substantial justice and spirit of the ordinance elements as they pertain here. The Articles and Sections were discussed by the Board. Mrs. Bolduc stated that a camping area is not included as a permitted use under Article IX Section E. It was therefore understood and agreed by the Board that granting the requested Use Variance to this section would essentially allow the camping area to be a permitted use in the Wetland and Watershed Protection District under Article IX Section E and re-establish the lapsed non-conforming use of the property as Exeter River Camping Area. It was also agreed that Article XVIII (District Zoning Ordinance) Section 4.1.1. requires a Conditional Use Permit from the Planning Board to allow any commercial operation on specific roads identified on the Zoning District Map. Thus granting the requested Use Variance to this section would re-establish the lapsed non-conforming use of the property as Exeter River Camping Area without requiring the conditions of this section. The Fremont Tax Map shows that the property is not located on a specified road, but is accessed off Clough Crossing with boundaries being the mid-point of the Exeter River (this boundary is shared with Map 2 Lot 30); and Map 2 Lots 28-4 and 30 on the South Road side. There was additional discussion relative to public interest, substantial justice and spirit of the ordinance elements as they pertain here.

Mr. Andrew asked if the Board was ready to vote on the five conditions and the Members answered that they were ready. Mrs. Bolduc explained for those present that a concurring vote of three members of the Board is necessary to find in favor of the applicant and that the Board must be in agreement with all five conditions in order to grant the Variance.

With no further discussion Mr. Andrew called for the Board Members vote on the five conditions for each of the Use Variance requests.

The results were as follows:

Article IX Section E (Wetland and Watershed Protection District).

Board vote:

1. The proposed use would not diminish surrounding property values.

Mr. Andrew yes

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|--------------|-----|
| Mr. Boisvert | yes |
| Mr. Downing | no |
| Mr. Bolduc | yes |
| Mr. Baker | yes |

Passed 4-1

2. Granting the variance would not be contrary to the public interest.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | yes |
| Mrs. Bolduc | no |
| Mr. Baker | no |

Passed 3-2

3. Denial of the variance would result in unnecessary hardship to the owner because:

(a) The zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | yes |
| Mrs. Bolduc | no |
| Mr. Baker | yes |

Passed 4-1

(b) No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | yes |
| Mrs. Bolduc | no |
| Mr. Baker | no |

Passed 3-2

(c) The variance would not injure the public or private rights of others.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | no |
| Mrs. Bolduc | no |
| Mr. Baker | yes |

Passed 3-2

4. Granting the variance would do substantial justice.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | yes |

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| Mrs. Bolduc | yes |
| Mr. Baker | yes |

Passed 5-0

5. The use is not contrary to the spirit of the ordinance.

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| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | no |
| Mr. Bolduc | no |
| Mr. Baker | no |

Failed 3-2

Article XVIII (District Zoning Ordinance) Section 4.1.1.

Board vote:

1. The proposed use would not diminish surrounding property values.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | yes |
| Ms. Bolduc | no |
| Mr. Baker | yes |

Passed 4-1

2. Granting the variance would not be contrary to the public interest.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | no |
| Mrs. Bolduc | no |
| Mr. Baker | no |

Failed 3-2

3. Denial of the variance would result in unnecessary hardship to the owner because:

(a) The zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | no |
| Mrs. Bolduc | yes |
| Mr. Baker | no |

Passed 3-2

(b) No fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property.

| | |
|------------|-----|
| Mr. Andrew | yes |
|------------|-----|

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| | |
|--------------|-----|
| Mr. Boisvert | yes |
| Mr. Downing | no |
| Mrs. Bolduc | no |
| Mr. Baker | yes |

Passed 3-2

(c) The variance would not injure the public or private rights of others.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | no |
| Mrs. Bolduc | no |
| Mr. Baker | yes |

Passed 3-2

4. Granting the variance would do substantial justice.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | yes |
| Mrs. Bolduc | yes |
| Mr. Baker | yes |

Passed 5-0

5. The use is not contrary to the spirit of the ordinance.

| | |
|--------------|-----|
| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | yes |
| Mrs. Bolduc | yes |
| Mr. Baker | yes |

Passed 5-0

Mrs. Bolduc read the results of the votes for both Articles.

Mr. Boisvert made the motion that, based on the information and plan presented and as the results of the Boards votes on the five conditions of a Use Variance, the Fremont Zoning Board of Adjustment deny the Use Variances to the terms of to Article IX Section E and to the terms of Article XVIII Section 4.1.1 of the Fremont Zoning Ordinance, as requested by the Estate of Frank C. Bettencourt, Sr. for property located at 13 Clough Crossing, (The Exeter River Camping Area) Map 2 Lot 029 to allow the resumption of the operations of the Exeter River Camping Area as a non-conforming use.

Motion seconded by Mr. Baker.

With no further discussion the vote on the motion to deny the Use Variance requests were:

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| Mr. Andrew | yes |
| Mr. Boisvert | yes |
| Mr. Downing | yes |
| Mrs. Bolduc | yes |

Mr. Baker yes

The applicant was instructed that there is a 30 day appeal period. He was also advised that the notice of decision of this action will be recorded at the Rockingham Registry of Deeds and will be referenced to the property deed. The applicant agreed to remit payment for all recording fees.

At 9:05 p.m. Mr. Boisvert made the motion to close this Public Hearing.
Motion seconded by Mr. Baker with unanimous favorable vote.

WORKSHOP

Mrs. Bolduc reported that she and Jack Downing and Jack Karcz will attend the Local Government Center Law Lecture in Portsmouth on October 29, 2008.

ORDINANCES

There was a general conversation relative to the Zoning Ordinance and the handbook.

CORRESPONDENCE

There was no incoming correspondence.

Next meeting: scheduled for November 25, 2008.

At 9:25 pm Mr. Downing made the motion to adjourn.
Motion seconded by Mr. Baker with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary
